

Internal Revenue Service
memorandum

TR-45-1874-91

CC:IT&A:03:CJJacobs

date: DEC 12 1991

to: District Counsel, [REDACTED]

from: Assistant Chief Counsel (Income Tax and Accounting)

subject: Request for review of opinion on deductibility of
contributions under I.R.C. section 170

This memorandum responds to your request for review of an opinion prepared by your office regarding the deductibility of contributions for missionaries under two different procedures used by the [REDACTED]. In our memorandum to you dated April 12, 1991, we addressed the deductibility of contributions under the "[REDACTED]" which was in effect from [REDACTED] through [REDACTED]. In that memorandum we concluded that contributions under the [REDACTED] generally are not properly deductible because the payments are made by the donor and received by the Church with the very clear understanding of both that the payments will be given to the missionary on whose behalf the funds were solicited. In this memorandum we address the deductibility of contributions made under the "[REDACTED]," instituted by the Church as of [REDACTED].

ISSUE

Does a donation made to the Church under the "[REDACTED]" qualify as a deductible contribution under I.R.C. section 170?

CONCLUSION

Since the Service has not yet determined that the information provided by the Church is complete, it is not possible at this time to state whether payments made under the Church's new "[REDACTED]" are deductible. If the facts are as provided, payments made under the "[REDACTED]" are significantly different from the payments held by the Supreme Court in Davis to be not deductible under section 170 of the Internal Revenue Code. Whether such payments are deductible as contributions under section 170 of the Internal Revenue Code depends upon whether some combination of the following factors is present: (1) the Church accepted the

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payments subject to an understanding with the [REDACTED] that their payments generally would be spent for the benefit or support of [REDACTED]; (2) the Church did not have control over how the funds would be spent; and (3) the donors intended to benefit the missionary rather than the Church itself.

DEFINITIONS

As a matter of convenience, we use the following definitions relative to this case:

1. Church: [REDACTED]
2. [REDACTED];
3. [REDACTED];
4. [REDACTED];
5. [REDACTED];

6. Mission: An ecclesiastical unit whose geographical area may include [REDACTED], but its principal responsibility is the missionary work of approximately [REDACTED] volunteer missionaries. A Mission is administered independently of the [REDACTED];

7. [REDACTED]: Ecclesiastical leader with the responsibility of supervising the individual missionaries within the mission. The [REDACTED]'s responsibilities include all aspects of operating the Mission, including payment of Mission expenses and control of all moneys which may come into the Mission financial accounts.

FACTS

The "facts" upon which we rely for our opinion are based on the materials provided by the Church. The Service has not determined that the information provided by the Church is complete.

The Church is recognized by the Internal Revenue Service as an organization eligible to receive tax deductible charitable contributions under I.R.C. section 170. The Church conducts a [REDACTED] program with over [REDACTED].

Missionaries of the Church are [REDACTED]. All missionaries are expressly ordained

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or "[REDACTED]" as official representatives of the Church. The missionaries are not self-appointed and their missionary service experience is neither intended nor conducted for their personal benefit. It is the objective of the Church to send missionaries to preach the gospel and convert new members to the Church. As part of their missionary service, the missionaries attend the [REDACTED] prior to being sent to a mission site. The missionaries [REDACTED] and are supervised in their proselytizing efforts by a [REDACTED] to whom the missionaries send regular reports.

[REDACTED], they are interviewed as prospective missionaries and instructed to complete a series of forms indicating their background. A recommendation is then prepared by the [REDACTED] and submitted to the [REDACTED]. If approved by the [REDACTED], the recommendation is forwarded to Church headquarters. Based upon the needs of the Church, the prospective missionary is "[REDACTED]" to a specific mission. This "[REDACTED]" is issued directly to the prospective missionary by ecclesiastical leaders from Church headquarters.

Before the [REDACTED] is received, prospective missionaries and [REDACTED] are interviewed by the [REDACTED] to be given general instructions and determine how financial support will be provided for the term of the mission, which is [REDACTED] and [REDACTED]. Under the "[REDACTED]" which was in effect from [REDACTED] through [REDACTED], missionaries and [REDACTED] were asked to provide support equal to, but not exceeding, the average cost for a missionary in the mission where the missionary [REDACTED] was serving. The Church has stated that due to the large disparity in the cost of missions in the various [REDACTED], this aspect of the [REDACTED] placed a highly disproportionate burden on some [REDACTED].

As of [REDACTED], the Church instituted a new procedure to fund the [REDACTED] known as the "[REDACTED]". Under the new program the missionaries and [REDACTED] are asked to provide the "[REDACTED]" of support each month, which represents the average monthly cost of supporting missionaries [REDACTED]. Currently, the [REDACTED] is \$[REDACTED] in U.S. currency and \$[REDACTED]. If the missionary is unable to provide the support and if the [REDACTED] are unable or unwilling to provide [REDACTED], the [REDACTED] will solicit funds from other members of the [REDACTED] or from other sources available to him. The Church has stated that, while it is expected that the [REDACTED] will contribute to the cost of [REDACTED]'s mission as part of the [REDACTED], prospective missionaries are not denied the opportunity to serve as missionaries because [REDACTED].

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[REDACTED] to the missionary effort. The procedures followed prior to the [REDACTED] being received by the missionary are identical under the new "[REDACTED]" to those used in the "[REDACTED]", with the exception of the amount of support expected for each missionary.

The Church finances all [REDACTED] missionaries called from the [REDACTED] through the new "[REDACTED]". Under this new procedure, the [REDACTED] is responsible for seeing that funds are available to meet the requirements of the [REDACTED] and sent from his [REDACTED]. These funds come primarily, as they have in the past, from contributions which the individual missionary may make and contributions by [REDACTED]. It is anticipated that, as generally occurred in the past, the donors will discontinue or reduce the amount of their contributions to the [REDACTED] fund once the missionary has returned from the mission. Additional contributions are solicited from [REDACTED] generally for the [REDACTED] fund as well as for the [REDACTED] fund.

The [REDACTED] is expected to provide the [REDACTED] each month for each missionary called from the [REDACTED]. Each month, the [REDACTED] at Church Headquarters automatically charges the [REDACTED] checking account the [REDACTED] for each missionary. As stated above, the [REDACTED] represents the average monthly cost of supporting each missionary no matter where the missionary serves. [REDACTED] expenses are also included in the [REDACTED]. No information was received regarding the variations in cost by location which went into calculating the [REDACTED]; therefore it is not known whether the location-specific amounts vary greatly, on average, from the [REDACTED].

Once Church Headquarters transfers the funds from the [REDACTED] accounts, it distributes the funds to the [REDACTED] based upon the average cost of maintaining a missionary in that mission location. The [REDACTED] identifies which missionaries are eligible for funding under the [REDACTED] by consulting the mission roster, which lists the source of support for each missionary. All service related expenses must come from the funds credited to the mission from Church Headquarters. Where local conditions allow, [REDACTED] are encouraged, but not required, to implement a [REDACTED] program, whereby the Mission directly pays expenses, which may [REDACTED] and other appropriate and miscellaneous costs. To the extent that the [REDACTED] does not implement a [REDACTED]

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program, he will remit to the individual missionaries the amount allotted for their maintenance. Remittances to missionaries are made in local currency by check to the missionary from the mission, cash to the missionary from the mission, or direct deposit into the missionary's bank account. The [REDACTED] prepares a monthly report consisting of a list of the [REDACTED] Fund missionaries at the mission each month as well as a computation of the maximum funds available to the mission for those missionaries (i.e., total number of [REDACTED] multiplied by the average monthly cost).

LEGAL DISCUSSION

Pursuant to I.R.C. section 170(a), (b) and (c), an individual taxpayer is entitled to a deduction for charitable contributions or gifts to or for the use of qualified charitable organizations including churches.

Davis

After a series of differing court decisions, the question whether Mormon parents could deduct contributions made directly to their missionary children was decided unanimously by the United States Supreme Court in Davis v. United States, 110 S.Ct. 2014 (1990). The Court held that the payments from the parents to their missionary children (in this case sons) were not deductible contributions.

In Davis, the Church of Jesus Christ of Latter-Day Saints requested that missionaries or their parents provide the amount of money that the Church estimated was necessary to support the missionary service. Generally a missionary's parents provided the necessary funds to support their son or daughter during the missionary service. If the parents were unable to do so, the Church would locate another donor from the local congregation or use money donated to the Church's general missionary funds. The Church believed that having individual donors send the necessary funds directly to the missionary benefited the Church in several important ways. Specifically, it "fosters the Church doctrine of sacrifice and consecration in the lives of its people" as well as reducing the administrative and bookkeeping requirements which would otherwise be imposed upon the Church. 110 S.Ct. at 2017.

Through written guidelines, the Church instructed missionaries that the money they received be used exclusively for missionary work. In accordance with the guidelines, the donors' sons in Davis used the money primarily to pay for rent, food, transportation, and personal needs while on their missions. 110 S.Ct. 2014.

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The Supreme Court in Davis concluded that the payments from the parents to their sons were not "for the use of" the Church as defined in section 170(c). The parents argued that "for the use of" should be read to include funds given directly to the missionaries where there was a high degree of supervision of the use of such funds by mission leaders to verify that missionaries were using the funds for missionary work. The government argued that "for the use of" was added to the statute in response to the Internal Revenue Service position that a charitable contribution was not allowable for a donation to a trust for the benefit of a charitable organization. The statute was amended to specifically make such donations in trust deductible, and the Service almost immediately interpreted the phrase as intended to convey a similar meaning as "in trust for." The Court found that the Service's longstanding interpretation was both consistent with the statutory language and fully implemented Congress' apparent purpose in adopting it. Accordingly, the Court held that a gift or contribution is "for the use of" a qualified organization when it is held in a legally enforceable trust for the qualified organization or in a similar legal arrangement. 110 S.Ct. at 2023.

The Supreme Court in Davis also concluded that the payments from the parents to their sons were not contributions "to" the Church under Treas. Reg. section 1.170A-1(g). The parents argued that this regulation allows the parents to claim deductions for their sons' unreimbursed expenditures incident to their sons' contribution of services to the Church. The Court disagreed on the basis that this argument was inconsistent with the plain language of the regulation that taxpayers may claim deductions only for expenditures made in connection with their own contributions of services to charities. 110 S.Ct. at 2024.

Rev. Rul. 62-113

For the "[REDACTED]" currently at issue, a relevant published Service position is Rev. Rul. 62-113, 1962-2 C.B. 10. Rev. Rul. 62-113 concerns three issues, one of which is germane here. That issue is whether contributions to a church missionary fund by the parent of a missionary are deductible under section 170. The facts in Rev. Rul. 62-113 must be carefully considered because, although very similar to the factual situation under consideration in a number of respects, they are also dissimilar in several important aspects.

In Rev. Rul. 62-113, the work of a local congregation in the field of missions is carried on by missionaries who are specially called from the congregation to devote their full time to missionary service for a period of specified duration and who are ordained for this purpose. The congregation has a number of

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missionaries presently serving missions in various parts of the world on a voluntary, noncompensated basis. Some of the missionaries are supported in whole or in part by their parents, some pay their expenses from their personal savings, and some have their traveling and living expenses entirely or partially reimbursed or paid from a church fund maintained for the purpose.

The local congregation, through the contributions of its members, maintains the fund and members are encouraged to make personal contributions to the fund. All contributions to the fund are expended in pursuance of the purposes of the fund and no part thereof is earmarked for any individual.

From this fund, missionaries are reimbursed for certain qualified living and traveling expenses incurred in the service of the church where such expenses are not covered by amounts received by the missionaries directly from their parents, from relatives or friends, or from their own savings. In order to justify reimbursement for his expenses, each missionary is required to submit a monthly report listing his receipts and expenses and in no case is the fund to supply amounts greater than the reports can validate.

The taxpayer's son is one of the missionaries from the local congregation. The son's support is from (1) amounts provided by the taxpayer and (2) the reimbursements of living and traveling expenses made to him by the church from the fund. Although the taxpayer made contributions to the church fund after the son became a missionary, he had done so over a period of years before his son's departure for the mission and he contemplates continuing to do so.

The reasoning of Rev. Rul. 62-113 is, if contributions to the missionary fund are earmarked by the donor for a particular individual, they are treated, in effect, as being gifts to the designated individual and are not deductible. However, the revenue ruling allows a deduction where it is established that a gift is intended by the donor for the use of the organization and not as a gift to an individual.

Rev. Rul. 62-113 states that the test in each case is whether the organization has full control of the donated funds, and discretion as to their use, so as to ensure that they will be used to carry out its functions and purposes.

In the revenue ruling, the son's receipt of reimbursements from the fund is alone insufficient to require a holding that this test is not met. Accordingly, unless the taxpayer's contributions to the fund are distinctly marked by him so that they may be used only for his son or are received by the fund

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pursuant to a commitment or understanding that they will be so used, they may be deducted by the taxpayer in computing his taxable income in the manner and to the extent provided by section 170 of the Code.

There appears to be no actual earmarking of donations made under the "[REDACTED]." Therefore, the first level of inquiry into the deductibility of contributions made under the new program becomes whether those contributions are received by the Church subject to an understanding that they will be spent for the benefit of a particular missionary. If such an understanding exists, the contributions are treated as gifts to the individual and are not deductible under Davis and Rev. Rul. 62-113.

Rev. Rul. 68-484

Rev. Rul. 68-484, 1968-2 C.B. 105, articulates an additional rule for determining whether a contribution is made to an organization rather than to a particular individual who benefits from that contribution. That revenue ruling involves the issue of whether amounts paid by a corporation under a two-part program to provide financial support in the form of scholarships and grants-in-aid to exempt educational institutions are deductible as charitable contributions. In the ruling, the educational institution involved selects the recipients of the scholarships, the amounts of which were equivalent to the regular tuition charges made by the institutions for students. The donor corporation is not connected to individual scholarship recipients in any way, and the educational benefits derived by the recipients from the donor's expenditures could be utilized by them as they chose, without any present or future obligation to the donor. That revenue ruling states that for purposes of determining that a contribution is made to or for the use of an organization described in section 170 of the Code rather than to a particular individual who ultimately benefits from the contribution, the organization must have full control of the use of the donated funds; and the contributor's intent in making the payment must have been to benefit the organization itself and not the individual recipient.

Therefore, the second level of inquiry into whether a payment made under the "[REDACTED]" is a gift to the Church or to a particular missionary has two parts: (1) whether the Church has sufficient control over the funds and discretion as to their use, and (2) whether a donor's intent is to benefit the Church itself and not a particular missionary. These are difficult questions to answer, in part because both the Church and the [REDACTED] want the money spent in the same way. We note that in contrast to the situation in

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Rev. Rul. 68-484, donors under the "[REDACTED]" are usually [REDACTED] of at least a substantial portion of the donation.

Rev. Rul. 79-81

An additional relevant published Service position on the "[REDACTED]" issue is Rev. Rul. 79-81, 1979-1 C.B. 107. That revenue ruling concerns the deductibility of amounts paid by "sponsors" to an exempt religious organization for a work-study program conducted under the auspices of the religious organization. While the facts differ somewhat from the present situation, Rev. Rul. 79-81 is pertinent here because it applies the tests enunciated in both Rev. Rul. 62-113 and Rev. Rul. 68-484 in determining whether the charitable organization has full control of the use of the donated funds.

In Rev. Rul. 79-81, a religious organization that engages in Bible research and propagates knowledge of the Bible, develops a four year program of religious leadership training as one means of accomplishing its purpose. Individual members are specially selected by the organization to receive the religious training, two years of which are provided at the organization's theological college. Upon completion of the program, the member receives a certificate of completion that does not qualify the member for employment with the organization, or in any particular field of endeavor. Most graduates of the program return to or enter fields of employment that are unrelated to the organization. Many graduates conduct household fellowship groups sponsored by the organization in their communities.

During the first and third years of the program the members remain in their full time jobs not connected with the organization, but participate in activities directed by the organization's theological college. In their second and fourth years of training, members are in residence at the theological college's campus and are instructed by the college faculty in general education courses and in religious education courses.

The religious organization expects to be paid \$4000 for each of the two years a member is in residence at their college. The amount of \$4000 approximates the annual cost of providing tuition, room, board, study materials, and activities to each member in residence at the college, and is the same amount paid by tuition-paying students of the college for tuition, room, and board. This sum is ordinarily provided by the member's "sponsor" who, in many cases, is the member's parent. Where the parents are unable to pay, the member is expected to solicit the sponsorship of other persons. The sponsors pledge their contributions by means of a commitment form showing the amount

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and timing of payments to be made, the name of the sponsor, and the name of the member who solicited the payment. The commitment form states that the payments made by a sponsor are nonrefundable and their use is solely at the discretion of the Board of Trustees. The sponsors are sent envelopes, which include a space for "student name," preaddressed to the religious organization for the attention of the theological college along with a note which directs that all checks should be payable to the organization because the college is not a separate entity.

The revenue ruling applies the reasoning of Rev. Rul. 62-113 and Rev. Rul. 68-484, and concludes that the \$4000 of contributions solicited by members for each year of on-campus training is earmarked by the donor for a particular individual by showing the name of the member who solicited the payment on the commitment form and by showing the "student name" on the envelopes used for making the payments. These facts evidence the contributor's intent to benefit the individual member rather than the religious organization. Moreover, the per-year cost of room, board, books, and classes consumed by a member during an on-campus training year approximates the \$4000 amount the member is expected to solicit for such year; so that the only control the organization has of the use of the donated funds is comparable to the control any school has over tuition payments it receives.

Therefore, if contributions under the "[REDACTED]" are not received subject to an understanding, and the Church has sufficient control over the funds and discretion as to their use, then the payment is deductible as a charitable contribution under section 170 of the Code. But if the payment is, in effect, a gift to a particular missionary, then, as in Davis, it is not deductible.

[REDACTED]

We concluded that the factual situation in the recently discontinued "[REDACTED]" was significantly the same as in Davis except that the payments Church [REDACTED] were asked to make to support [REDACTED] while on a Church mission were made to a [REDACTED] fund in the [REDACTED] and then sent on, usually in the same amount, to the missionary. The Church's attorneys argued that because the [REDACTED] payments under the [REDACTED] were made to the Church's [REDACTED] fund, the Church had control over the payments and, thus, the payments were charitable contributions to the Church and deductible by the [REDACTED].

As discussed in our previous memorandum, we disagree with this argument because the payments were solicited and received by the Church and made by the [REDACTED] with the understanding that

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the payments would be sent (and the payments, in fact, were sent) on to the [REDACTED]. We concluded that the Church in fact did not have control over the payments but instead acted as a conduit from the [REDACTED]. Under those circumstances, the fact that payments were made to the Church did not make them different from the payments in Davis and, therefore, under that case, and Rev. Rul 62-113, the payments made under the [REDACTED] were not deductible charitable contributions.

[REDACTED]

Similarly, payments made under the new "[REDACTED] program" are not deductible charitable contributions if they do not differ significantly from the factual situation in Davis. Certainly the form of the contributions is different from Davis. The Church states it has control over the funds in part because the contributions go to the [REDACTED] fund, then to the Church Headquarters, then to the [REDACTED], rather than merely going through the [REDACTED] to the missionary as they basically did under the "[REDACTED]." In addition, the contribution does not necessarily get spent in the same dollar amount for the [REDACTED] as it generally did in the past. In other words, the reason for the Church's adopting the "[REDACTED]"--the differing level of support needed by missionaries in different missions--indicates that some missionaries will actually receive substantially more support, and some substantially less support, than [REDACTED] donate. Also, the payments apparently are not explicitly earmarked for a particular missionary.

However, similarities to Davis and the previous "[REDACTED]" do exist. The primary solicitation for funds to support a missionary continues to be made to [REDACTED] missionary. Also, it is anticipated that, as generally occurred in the past, the donors will discontinue or reduce the amount of their contributions to the [REDACTED] fund once the missionary has returned from the mission. These facts suggest that an understanding could exist between the donors and the Church, and that the donors' intent is to benefit the individual and not the Church itself. Under Service position as stated in the revenue rulings discussed above, contributions made subject to such an understanding would not significantly differ in substance from the situation in Davis.

Accordingly, a section 170 deduction for contributions under the program by [REDACTED] should be disallowed if the Service determines that in substance the gift was to a particular missionary rather than to the Church. Such a determination would be supported by the presence of some

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combination of the following factors: (1) the Church accepted the payments subject to an understanding with [REDACTED] that their payments generally would be spent for the benefit or support of [REDACTED]; (2) the Church did not have control over how the funds would be spent; and (3) the donors intended to benefit the missionary rather than the Church itself.

Factors Against Challenging Section 170 Deduction

We recognize that denying a section 170 deduction on the basis of an oral understanding, the Church's lack of discretion, and the donor's intent is an inherently difficult task. We see some additional factors that make that task even more difficult for donations under the "[REDACTED]." One problem is caused by Rev. Rul. 62-113. While that revenue ruling states the commitment and understanding rule correctly, it does not apply that rule to the facts of the ruling to determine explicitly whether an understanding existed. The revenue ruling would be more supportive of finding that a gift to a particular missionary existed if it examined what constitutes an understanding. The fact that it doesn't weakens our ability to rely on it in the present situation.

A second problem is caused by the holding of the Tax Court in Peace v. Commissioner, 43 T.C. 1 (1964), acq. 1965-2 C.B. 13. Despite the listing of the names of specific missionaries on the checks donated to a nondenominational mission, the court in that case made a specific factual finding that it was the intention of the donor that the funds be donated to the common fund of the mission to be used as the mission saw fit. Under the holding of Peace, donations made through the "[REDACTED]" would be deductible if it can be shown that there is a similar intention to have the funds available for general use and not for the benefit of a specific missionary.

In sum, we think that if the facts are as provided by the Church, the payments made under the Church's new "[REDACTED]" are significantly different from the payments held by the Supreme Court to be not deductible under section 170 of the Internal Revenue Code in Davis. Whether such payments are deductible as contributions under section 170 depends upon whether some combination of the following factors is present: (1) the Church accepted the payments subject to an understanding with the [REDACTED] that their payments generally would be spent for the benefit or support of [REDACTED]; (2) the Church did not have control over how the funds would be spent; and (3) the donors intended to benefit the missionary rather than the Church itself.

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